

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JENNIFER E. MARTIN,

Plaintiff,

V.

**GRAYS HARBOR COMMUNITY  
HOSPITAL, et al.,**

## Defendants.

CASE NO. C11-5388BHS

**ORDER GRANTING MOTION  
TO DISMISS**

This matter comes before the Court on Defendants' motion to dismiss pursuant to 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure (Dkt. 17). The Court considered the pleadings filed in support of the motion and the remainder of the file hereby grants the motion for the reasons stated herein.

On November 4, 2011, Defendants filed a motion to dismiss Plaintiff Jennifer E. Martin’s (“Martin”) claims against them under Rules 12(b)(1) and 12(b)(6). Dkt. 17. Martin failed to file an opposition to the motion.

Local Rule 7(b)(2) states that “[i]f a party fails to file papers in opposition to a motion, such failure may be considered by the court as an admission that the motion has merit.” However, the Ninth Circuit has held that a motion for summary judgment should not be granted simply because there is no opposition, even if the failure to oppose

1 violated a local rule. *See Henry v. Gill Indus.*, 983 F.2d 943, 950 (9th Cir. 1993). Rather,  
2 the moving party must demonstrate the absence of genuine issues of material fact,  
3 regardless of whether the party against whom the motion for summary judgment is  
4 directed has filed any opposition. *See Cristobal v. Siegel*, 26 F.3d 1488, 1491 (9th Cir.  
5 1994).

6 Here, even if the Ninth Circuit's principle regarding unopposed motions for  
7 summary judgment applies to Defendants' motion to dismiss, the motion should be  
8 granted. Defendants have shown that Martin should be judicially stopped from litigating  
9 this case as the real party in interest because she improperly valued the pending claim  
10 against Defendants in her bankruptcy filings, and the bankruptcy court ordered discharge  
11 of her debt. *See* Dkt. 17. Accordingly, the Court concludes that Defendants' motion to  
12 dismiss should be granted.

13 The Court, having considered the pleadings filed in support of the motion and the  
14 remainder of the file, does hereby find and **ORDER** that Defendants' motion to dismiss  
15 (Dkt. 17) is **GRANTED** and the claims alleged in Martin's complaint are **DISMISSED**  
16 **with prejudice**.

17 Dated this 6<sup>th</sup> day of December, 2011.

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BENJAMIN H. SETTLE  
United States District Judge